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NATIONAL INVESTMENT CONSULTANTS, INC.,
11 And WEI M. TSE a.k.a. RAYMOND TSE, and for
12 Relief Defendant THERESA C. WONG,

13 UNITED STATES DISTRICT COURT
14 NORTHERN DIVISION OF CALIFORNIA
SAN FRANCISCO DIVISION

15 U.S. COMMODITY FUTURES TRADING
16 COMMISSION and THE COMMISSIONER OF
CORPORATIONS OF THE STATE OF
17 CALIFORNIA,

18 Plaintiffs,

19 vs.

20 NATIONAL INVESTMENT CONSULTANTS,
INC, a California corporation, PACIFIC BEST
21 GROUP LTD, a.k.a. PACIFIC BEST
COMPANY LTD, a British Virgin Islands
Corporation, YI KERRY XU, an individual,
22 RUN PING ZHOU a.k.a. FLORA ZHOU, an
individual, and WEI M. TSE a.k.a. RAYMOND
23 TSE, an individual,

24 Defendants,

CASE NO.: 052641 JSW

Assigned to Hon. Jeffrey S. White

**NOTICE OF MOTION AND MOTION
FOR ORDER ALLOWING
WITHDRAWAL OF COUNSEL OF
RECORD FOR DEFENDANTS
NATIONAL INVESTMENT
CONSULTANTS INC., WEI MAN TSE
a.k.a RAYMOND TSE and RELIEF
DEFENDANT THERESA WONG;
MEMORANDUM OF POINTS AND
AUTHORITIES**

[FILED CONCURRENTLY WITH
SUPPORTING DECLARATION]

1 Relief Defendant Theresa Wong at this email address as recently as earlier this month. If this
2 motion is granted, National Investment Consultants, Inc., Wei Man Tse and Relief Defendant
3 Theresa Wong may be served with notices and papers at: [NEED EMAIL ADDRESSES]

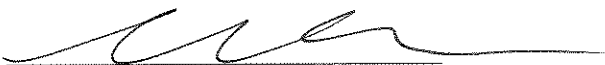
4 This motion is based on the pleadings and papers on file in this action, the attached Notice
5 of Motion, the accompanying Memorandum of Points and Authorities, the declaration of Edward
6 Gartenberg and whatever evidence and argument is presented at the hearing of this motion.

7 If no opposition is filed, Thelen Reid requests that the Court rule without oral argument. A
8 proposed order is filed herewith.

9
10 Dated: May 15, 2006

THELEN REID & PRIEST LLP

11
12 By


13 EDWARD GARTENBERG
14 ALEXANDRA EPAND
15 ROBERT A. WEIKERT
16 Attorneys for Defendants
17 NATIONAL INVESTMENT CONSULTANTS,
18 INC.; WEI M. TSE a.k.a. RAYMOND TSE, and for
19 Relief Defendant THERESA C. WONG
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MEMORANDUM OF POINTS AND AUTHORITIES

I. INTRODUCTION

Good cause exists to allow Thelen Reid & Priest LLP (“Thelen Reid”) to withdraw as counsel of record for defendants National Investment Consultants, Inc., Wei Man Tse and Relief Defendant Theresa Wong because an actual conflict has arisen between these defendants and Thelen Reid cannot continue to represent them in this action. Further, defendants have failed to cooperate with an essential aspect of the attorney-client relationship.

II. GOOD CAUSE EXISTS TO ALLOW THELEN, REID & PRIEST TO WITHDRAW AS COUNSEL OF RECORD FOR NATIONAL INVESTMENT CONSULTANTS, INC., WEI MAN TSE AND RELIEF DEFENDANT THERESA WONG

California Rules of Professional Conduct (“CRPC”), Rule 3-700(B)(2) prohibits an attorney from continuing to represent multiple clients in a matter where such representation would result in violation of the Rules of Professional Conduct. CRPC Rule 3-310(C)(1) further prohibits an attorney from concurrently representing, without the written consent of each client, multiple clients in a matter in which their interests potentially conflict. Northern District Local Rule 11-5 permits withdrawal by order of Court after written notice has been given reasonably in advance to the client and to all other parties who have appeared in the case. Such notice is being provided here. (N.D. L.R. 11-5(a).)

In most cases, the determination whether to grant or deny a motion to withdraw as counsel lies within the sound discretion of the trial court (*Manfredi & Levine v. Superior Court*(1968) 66 Cal.App.4th 1128, 1133), and an attorney should usually be permitted to withdraw. (*People v. Prince* (1968) 268 Cal.App.2d 398, 406-407.) Where there is a conflict, the lawyer *must* withdraw. (Rule Prof. Conduct, rule 3-700(B)(2) and 3-310(C).)

A. A Conflict Has Arisen Between National Investment Consultants, Inc., Wei Man Tse and Relief Defendant Theresa Wong.

There is no agreement between Thelen Reid and defendants that would waive the current conflict of interest between National Investment Consultants, Inc., Wei Man Tse and Relief Defendant Theresa Wong, and that would provide that Thelen Reid is to act as counsel of record

1 for all defendants. As stated in the Declaration of Edward Gartenberg, an actual conflict between
 2 National Investment Consultants, Inc., Wei Man Tse and Relief Defendant Theresa Wong has
 3 arisen and Thelen Reid cannot continue to represent these parties. Gartenberg Decl., ¶ 4.
 4 *California Rule of Prof. Conduct* Rule 3-700(B)(2) and 3-310(C)(1) provides that a lawyer *must*
 5 withdraw when there is a conflict of interest.

6 This conflict arose after Plaintiffs filed this suit and after the Court entered the Statutory
 7 Restraining Order and Preliminary Injunction. Recently, Plaintiffs have advised that they intend to
 8 seek a contempt order against some or all of Thelen Reid's current clients. This revelation has
 9 created a conflict between amongst all Defendants represented by Thelen Reid.¹ There is simply
 10 no method of resolving these conflicts.

11 **B. National Investment Consultants, Inc., Wei Man Tse and Relief Defendant**
 12 **Theresa Wong Have Failed To Cooperate With An Essential Aspect Of The**
 13 **Attorney-Client Relationship.**

14 In this case, Thelen Reid should also be permitted to withdraw because National
 15 Investment Consultants, Inc., Wei Man Tse and Relief Defendant Theresa Wong have failed to
 16 [NEED FACTS RE NON-PAYMENT]. (See, *Statue of Liberty-Ellis Island Foundation, Inc. v.*
 17 *Intl. United Industries, Inc* (S.D.N.Y. 1986) 110 F.R.D. 395, 397 (firm permitted to withdraw
 18 where client had not cooperated with the firm or paid for it services); *Solomon v. Solomon* (N.Y.
 19 App. 1991) 172 A.D.2d 1081, 1082 (counsel permitted to withdraw where client failed to comply
 20 with request to complete necessary forms.) In the case of *Darby v. City of Torrance*, 810 F. Supp.
 21 275 (C.D. Cal. 1992), the Court stated that as a matter of course "it is true that the failure of a
 22 client to pay attorney's fees will serve as grounds for an attorney to withdraw" Such failure
 23 also constitutes a breach of the attorney-client fee agreement. Cal. Rules of Prof. Conduct, 3-
 24 700(C)(1)(f).

25 Upon good cause shown and notice to the client, an attorney may withdraw by obtaining
 26 leave of the Court. (N.D. L. R. 11-5(a).) A client's failure to cooperate with an essential aspect of

27 ¹ Thelen Reid has advised all parties that due to this new conflict, Thelen Reid's clients are in the process of seeking
 28 new counsel to represent them in this action.

1 the attorney-client relationship constitutes good cause for an attorney to withdraw. (*See*
 2 *International Business Advisors, Ltd. v. Payless Drugstores Northwest, Inc.* 27 U.S.P.Q.2d 1053,
 3 1054 (N.D. Cal. 1993).) The court in the case of *Liberty-Ellis Island Foundation, Inc. v.*
 4 *International United Industries, Inc.*, 110 F.R.D. 395 (S.D.N.Y. 1986), granted the motion of
 5 counsel to be relieved on the grounds that the client had failed to cooperate with counsel.

6 **C. Defendants Have Ample Opportunity To Locate New Counsel Sufficiently In**
 7 **Advance Of Trial.**

8 No prejudice to Pacific Best will arise if National Investment Consultants, Inc., Wei Man
 9 Tse and Relief Defendant Theresa Wong are required to find new counsel at this stage.

10 First, National Investment Consultants, Inc., Wei Man Tse and Relief Defendant Theresa
 11 Wong have time to obtain separate counsel who can represent them in this matter.

12 Second, there is no discovery pending directed to National Investment Consultants, Inc.,
 13 Wei Man Tse or Relief Defendant Theresa Wong, nor are there pending motions. Gartenberg
 14 Decl., ¶ 8.

15 Third, discovery will not close until June 30, 2006, and the case is not scheduled to
 16 proceed to trial until October 30, 2006.

17 Fourth, well in advance of this motion, counsel has also provided National Investment
 18 Consultants, Inc., Wei Man Tse and Relief Defendant Theresa Wong with notice that, absent a
 19 substitution of counsel, Thelen Reid would move to terminate its representation. National
 20 Investment Consultants, Inc. has been advised that, as a corporate entity, it must hire a new
 21 attorney immediately because corporations may not appear *pro se* in federal court.² Defendants
 22 have further been advised that, unless it locates new counsel, it could be subject to default or other
 23 liabilities. Gartenberg Decl., ¶ 6. In addition, this Motion serves as notice to all other parties who
 24 have appeared in this action as required by Local Rule 11-5.

25
 26 ² The ban on corporate self-representation does not prevent the court from granting an attorney's
 27 motion to withdraw as counsel of record, *even where the corporation would be left without*
 28 *representation* as a result. (*Gamet v. Blanchard* (2001) 91 Cal.App.4th 1276, 1284, 111
 Cal.Rptr.2d 439, 444, fn. 5.)

1 Consequently, National Investment Consultants, Inc., Wei Man Tse and Relief Defendant
 2 Theresa Wong are aware of the necessity of obtaining new counsel and there is ample time for
 3 Pacific Best to locate new counsel to represent it in this matter. Thus, National Investment
 4 Consultants, Inc., Wei Man Tse and Relief Defendant Theresa Wong will not be prejudiced by the
 5 withdrawal of Thelen Reid as counsel of record.

6 **III. CONCLUSION**

7 Based on the foregoing, Thelen Reid respectfully requests that it be relieved as counsel of
 8 record for Pacific Best in this matter.

9
 10 Dated: May 15, 2006

THELEN REID & PRIEST LLP

11
 12 By


 13 EDWARD GARTENBERG

14 ALEXANDRA EPAND

15 ROBERT A. WEIKERT

16 Attorneys for Defendants

17 NATIONAL INVESTMENT CONSULTANTS,

18 INC.; WEI M. TSE a.k.a. RAYMOND TSE, and for

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